

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

JEFFERSON GRIFFIN,

Petitioner-Appellee,

v.

NORTH CAROLINA STATE
BOARD OF ELECTIONS,

Respondent-Appellant,

and

ALLISON RIGGS, et al.,

Intervenor-Respondents.

Nos. 25-1018(L), 25-1019, 25-
1020, 25-1024

**RESPONDENT-APPELLANT’S REPLY IN SUPPORT OF
MOTION FOR IMMEDIATE ISSUANCE OF THE MANDATE**

Under Appellate Rule 27(a)(4), Respondent-Appellant respectfully submits this reply in support of its motion for this Court to direct the Clerk to issue the mandate immediately.

1. Petitioner asserts that the Board has failed “to identify any benefit of issuing the mandate immediately.” Opp. 1. That is incorrect. In state trial court, Petitioner argued that this Court’s opinion instructing the district court to retain jurisdiction over the federal

issues here is not in effect until this Court's mandate issues. Petitioner further sought to have the state trial court rule on and reject the Board's federal claims before the district court is able to modify its remand order in accordance with this Court's instructions—presumably so that Petitioner could argue that the state-court order should have preclusive effect against the Board when it returns to federal court.

2. Petitioner made this position clear at a February 7 hearing in state trial court. At that hearing, Petitioner's counsel claimed that “the Fourth Circuit's decision that's going to eventually modify Judge Myers' order and allow him to retain jurisdiction of the federal defenses” “*is not actually in effect.*” *Griffin v. N.C. Bd. of Elections*, No. 24-cv-040619-910 et al., Transcript at 5, pp 1-7 (Wake Cnty. Sup. Ct. Feb. 7, 2025) (attached as Exhibit A) (emphasis added). Petitioner's counsel further asserted that “Judge Myers' order *remanding the entire case* to this court is currently in effect.” *Id.* (emphasis added).

Petitioner's counsel then requested that the state trial court immediately rule on the federal-law issues that this Court held the Board has a right to litigate in a federal forum. Petitioner's counsel stated that “the entire case, state law issues and the federal defenses,

are before this court” and that “we think those issues should be addressed by the court today.” *Id.* at 5-6.

3. By issuing the mandate now, this Court can ensure that the district court effectuates this Court’s instruction to retain jurisdiction over the federal issues before the conclusion of the state-court litigation. That litigation is proceeding expeditiously. Petitioner has appealed from the trial court’s denial of his petitions for judicial review and asked the state court of appeals to expedite review of his appeal. *See Griffin v. N.C. State Bd. of Elections*, No. P25-104, Rule 2 Motion to Expedite Appeal Expedited Decision Requested at Doc. 1, https://www.ncappellatecourts.org/show-file.php?document_id=369474 (last visited Feb. 13, 2025) (N.C. App., Feb. 11, 2025). Issuing the mandate now will avoid any doubt about the district court’s ability, consistent with this Court’s opinion, to exercise jurisdiction over the federal issues when the state proceedings conclude.

4. Petitioner faults the Board for “wait[ing] almost a week to file its motion.” Opp. 1. But the Board was not aware of Petitioner’s effort to thwart federal jurisdiction until the Friday, February 7 hearing

in state trial court. The Board moved this Court to immediately issue the mandate the next business day, on Monday, February 10.

5. Petitioner finally states that he “is actively evaluating whether to file a petition for rehearing.” Opp. 1. Under Appellate Rule 40(d)(1), Petitioner must file any rehearing petition by Tuesday, February 18. If the Court concludes that Petitioner should be afforded the full time in which to file a rehearing petition, the Board respectfully submits that, at a minimum, the Court should direct the Clerk to issue the mandate immediately after that deadline expires—on Wednesday, February 19—in the event that Petitioner fails to seek rehearing.

Respectfully submitted, this the 13th day of February 2025.

/s/ Terence Steed

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CERTIFICATE OF COMPLIANCE

I certify that this response complies with Federal Rule of Appellate Procedure 27(d) because it has been prepared in Century Schoolbook 14-point font using Microsoft Word. I further certify that it complies with Federal Rule of Appellate Procedure 27(d)(2)(C) because it contains 782 words.

Respectfully submitted, this the 13th day of February 2025.

/s/ Terence Steed

Terence Steed

Special Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that on February 13, 2025, I filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

Respectfully submitted, this the 13th day of February 2025.

/s/ Terence Steed

Terence Steed

Special Deputy Attorney General

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

24CV040619-910

24CV040620-910

JEFFERSON GRIFFIN,

24CV040622-910

Petitioner,

v.

FEBRUARY 7, 2025

NORTH CAROLINA STATE BOARD
OF ELECTIONS,

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Respondent.

FEBRUARY 7, 2025, CIVIL SESSION

HONORABLE WILLIAM R. PITTMAN, JUDGE PRESIDING

TRANSCRIPT OF HEARING

VOLUME 1 OF 1

Maren M. Fawcett, RPR, CRR
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1 (Superior Court of Wake County convened civil
2 court session on Friday, February 7, 2025, at
3 10:03 a.m., before the Honorable William R.
4 Pittman. The case of Griffin v. North Carolina
5 State Board of Elections was called for hearing at
6 10:03 a.m.)

10:03:06 7 THE COURT: Good morning. Good morning, ladies
10:03:08 8 and gentlemen. Welcome to the civil session of Wake County
10:03:10 9 Superior Court. We are here today in 24CV040619, 620, and
10:03:27 10 622, which are titled Jefferson Griffin vs. North Carolina
10:03:31 11 State Board of Elections.

10:03:34 12 This is a petition for judicial review of a final
10:03:38 13 decision of the State Board of Elections on three different
10:03:44 14 matters and that's it.

10:03:49 15 As you can see, we are full to overflowing, and
10:03:56 16 Ms. Fawcett is one of the best court reporters in the world,
10:04:01 17 but she can't hear if anybody else is talking. So if you
10:04:05 18 need to have a conversation with somebody, please take it
10:04:07 19 outside. And if you take it outside and lose your seat, I'm
10:04:13 20 sorry.

10:04:15 21 All right. I will hear from petitioner and you do
10:04:19 22 it in whatever order you want to do it.

10:04:23 23 MR. SCHAUER: Good morning, Your Honor.

10:04:24 24 THE COURT: Good morning.

10:04:25 25 MR. SCHAUER: My name is Craig Schauer on behalf

10:04:27 1 of Judge Griffin, the petitioner. I think we may need to
10:04:30 2 address a threshold issue, which is the notice of the
10:04:33 3 *England* reservation that the respondents filed.

10:04:36 4 THE COURT: Okay.

10:04:36 5 MR. SCHAUER: I want to make a few points about
10:04:38 6 that. I think it might make sense for the other side to
10:04:41 7 respond to my points.

10:04:42 8 THE COURT: Okay.

10:04:43 9 MR. SCHAUER: All right. So they filed an *England*
10:04:44 10 reservation in light of the Fourth Circuit's decision, and I
10:04:48 11 think we'll clarify this, but my understanding is they are
10:04:50 12 not going to push the federal defenses that the State Board
10:04:53 13 identified in their order. We have some concerns if that's
10:04:55 14 their position.

10:04:55 15 One, we think they may have waived their ability
10:04:58 16 to not push those defenses because they've already been
10:05:01 17 briefed.

10:05:01 18 Two, we believe they're taking this position in
10:05:04 19 light of the Fourth Circuit's decision that's going to
10:05:06 20 eventually modify Judge Myers' order and allow him to retain
10:05:10 21 jurisdiction of the federal defenses. That order is not
10:05:13 22 actually in effect. Judge Myers' order remanding the entire
10:05:16 23 case to this court is currently in effect this morning, and
10:05:19 24 so we believe the entire case, state law issues and the
10:05:22 25 federal defenses, are before this court this morning.

10:05:25 1 Second, even when the mandate were to come into
10:05:28 2 effect and Judge Myers were to modify his order and retain
10:05:31 3 jurisdiction, it's not clear that that would deprive the
10:05:33 4 courts of addressing those federal defenses.

10:05:35 5 And that leads us to the fourth point, which I
10:05:37 6 believe the State Board said this in their notice, the court
10:05:41 7 should construe the state law claims in light of the federal
10:05:44 8 issues; and, therefore, we think the issues are intertwined
10:05:47 9 and the court can't actually rule on Judge Griffin's claims
10:05:51 10 without addressing the federal defenses that the State Board
10:05:53 11 relied on in its decision.

10:05:55 12 So, for those reasons, we think those issues
10:05:57 13 should be addressed by the court today, but we want to make
10:05:59 14 sure the respondents have an opportunity to address that as
10:06:01 15 well.

10:06:02 16 THE COURT: Okay.

10:06:04 17 MR. STEED: Your Honor, this is actually pretty
10:06:05 18 simple. It's not terribly important, plaintiff's view of
10:06:09 19 this. We are asserting the reservation, the defendants
10:06:13 20 here, the respondents.

10:06:15 21 The briefing that came to this court came on
10:06:17 22 Monday. The ruling that changed the abstention came from
10:06:21 23 the Fourth Circuit after that, and then we filed our *England*
10:06:23 24 reservation. That *England* reservation and the notice that
10:06:26 25 we filed should be considered and understood to be an

10:06:29 1 amendment to those arguments. And the way that we plan on
10:06:32 2 handling it today is placing our *England* reservation in the
10:06:36 3 record exactly as we are required to do by the federal
10:06:40 4 issues and then not arguing those federal issues.

10:06:42 5 He's absolutely correct, that those same line of
10:06:45 6 federal cases require or allow this court to take notice of
10:06:47 7 those federal arguments for the purpose of interpreting
10:06:51 8 state statute. What we are saying is that we will not be
10:06:54 9 arguing that because we have to do that in order to preserve
10:06:56 10 our ability to get back to federal court after all the State
10:06:59 11 proceedings are finished.

10:07:00 12 THE COURT: I think that's fine. I agree with
10:07:02 13 you -- with both of you that that doesn't preclude this
10:07:06 14 court from considering those issues in its ruling if it
10:07:10 15 decides it's relevant.

10:07:12 16 Let me do another couple of housekeeping things.
10:07:17 17 The motion of Justice Riggs to intervene is allowed.

10:07:25 18 The motion for leave to file amicus curiae brief
10:07:31 19 by impacted voters and nonpartisan organizations is allowed.

10:07:36 20 The motion to file amicus by Jay DeLancy, who is
10:07:43 21 an individual that's self-represented, is allowed. And the
10:07:47 22 motion for leave to file amicus briefs on behalf of Secure
10:07:53 23 Families Initiative and Count Every Hero, an unincorporated
10:07:58 24 association, is allowed. And the court has read those
10:08:03 25 briefs.